IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 6TH NOVEMBER 2007 / 15TH KARTHIKA 1929

Crl.MC.No. 3360 of 2007()

CC.1065/2005 of JUDL. MAGISTRATE OF FIRST CLASS COURT, CHAVAKKAD

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PETITIONER: ACCUSED

R.V.PRAKASH, S/O.KAMMARA POTHUVAL
DEVI HOUSE, RAMANAKATH VEHEDIYIL
ANNUR P.O., PEYYANNUR.

BY ADV. SRI.M.V.AMARESAN

RESPONDENTS:

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1. E.M.B.MUHAMMED
S/O.BAPUHAJI, POOLICKAL HOUSE, CHAVAKKAD THROUGH
POWER OF ATTORNEY HOLDER, V.V.SHEMIL,
S/O.V.V.HAMEED,VALIYAKATH VADAKKETHALAKKAL HOUSE
ALUMBADI, CHAVAKKAD TALUK.

2. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 06/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.3360 of 2007

Dated this the 6th day of November 2007

O R D E R

The petitioner faces indictment in a prosecution under Section 138 of the Negotiable Instruments Act. Cognizance has been taken as early as in 2005. The petitioner has not entered appearance. Warrant of arrest has been issued by the learned Magistrate against the petitioner. The petitioner apprehends imminent arrest in execution of the warrant.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. His absence earlier was not wilful or deliberate. The petitioner is willing to surrender before the learned Magistrate and seek regular bail. But he apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. He, therefore, prays that directions under Section 482 Cr.P.C. may be issued to the learned Magistrate to release the petitioner on bail when he appears and applies for bail.

3. The petitioner has a further grievance to make. He wants his case to be taken up for trial expeditiously. He further wants his personal presence to be exempted. He is willing to deposit the cheque amount in the form of fixed deposit before the learned Magistrate. It is for the petitioner to make all necessary applications before the learned Magistrate. He must appear before the learned Magistrate and seek regular bail. I find absolutely no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific directions appear to be necessary. Sufficient general directions have been issued in Alice George vs. Deputy Superintendent of Police [2003 (1)KLT 339].

4. In the result, this Criminal Miscellaneous Case is dismissed but with the specific observation that if the petitioner surrenders before the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

5. After the petitioner enters appearance, he can certainly apply for exemption from personal appearance. If the petitioner offers to deposit the amount also as offered by him, I find no reason why the learned Magistrate should not accept the prayer for exemption from personal appearance. The petitioner will, of course, be entitled to seek expeditious disposal also. All such prayers of the petitioner should be considered by the learned Magistrate on merits and appropriate orders passed.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007